



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 9, 2012

Mr. F.E. Skip Kalb, Jr.
Director Strategic Development
PO Box 961051
Fort Worth, TX 76131-2830

**RE: Consultant's Contract With Whatcom County For Gateway Pacific Terminal And
Custer Spur Projects**

Dear Mr. Kalb:

This is in regard to your recent letter to Whatcom County regarding consultant contract amendments for the Gateway Pacific Terminal and Custer Spur projects. Whatcom County shared your letter with the Department of Ecology (Ecology) and there is one point of clarification that we would like to address.

In your letter, you state that "Burlington Northern Santa Fe Railway Company (BNSF) notes that its proposed railroad project is subject to review only under the National Environmental Policy Act (NEPA)...". From this statement, it is not clear to us whether BNSF takes the position that its project is not also subject to the State Environmental Policy Act (SEPA). As we indicated during our February 29 meeting with you, it is Ecology's position that the Custer Spur project is subject to SEPA as well as NEPA.

To recap what was discussed at the meeting, we explained that Whatcom County is within Washington State's coastal zone and that SEPA is an enforceable policy under the state's Coastal Zone Management Plan. The Coastal Zone Management Plan is a federally approved plan promulgated by the State under the federal Coastal Zone Management Act, 16 U.S.C. 1451 to 1465. In order to obtain any federal permit for the Custer Spur project, BNSF will first need to obtain a coastal zone consistency determination from Ecology. Ecology can issue such a determination only after it concludes that the project conforms to the enforceable policies of the Coastal Zone Management Plan, including SEPA. Thus, Ecology would first need to conclude that the Custer Spur project meets the requirements of SEPA prior to issuing a coastal zone consistency determination.



During the February 29 meeting, we appreciated the BNSF team's willingness to work cooperatively with Ecology to ensure adherence to all applicable legal requirements during the environmental review phase. For the Custer Spur project, we anticipate that SEPA and NEPA requirements will substantially overlap and that the environmental impact statement will satisfy both sets of requirements. We look forward to working with the United States Army Corps of Engineers and Whatcom County to make sure that happens. In the meantime, if you have questions about Ecology's role in the process, please feel free to contact Loree' Randall at loree.randall@ecy.wa.gov or (360) 407-6068.

Sincerely,

A handwritten signature in cursive script, reading "Jeannie Summerhays". The signature is written in dark ink and is positioned above the printed name and title.

Jeannie Summerhays
Regional Director

cc: Loree' Randall, Ecology
Laura Watson, ATG
Brenden McFarland, Ecology